

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 605/MUM/2024
Assessment Year: 2017-18**

Dy. CIT-5(2)(1),
Room No. 571, 5th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. Vodafone Idea Ltd. (Successor of
erstwhile Vodafone India Ltd.),
10th floor, Birla Centurian, P B Marg,
Worli,
Mumbai-400030.
PAN NO. AAFCA 5315 A
Respondent

Assessee by : Mr. Ketan Ved/Ninad Patade
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 04/07/2024
Date of pronouncement : 27/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 15.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was legally correct in allowing the appeal of the



assessee by holding that the order u/s 143(3) dated 05/12/2019 was passed on a non-existing company is bad in law relying on the decision of the Hon'ble ITAT in assessee's own case in ITA No.662/MUM/2022 for A.Y.2017-18 ignoring the fact that: (a) the notice u/s. 143(2) was issued to the company M/s Aditya Birla Telecom Ltd (predecessor of M/s. Vodafone Idea Ltd.) for the period relevant to AY 2017-18, when the company was very much in existence; and (b) the defect in recording the name of a company in an order, which was subsequently merged (w.e.f. 30.11.2018) was a procedural defect or mistake curable under Section 292B, since no prejudice was caused to the assessee?

2. We have heard rival submission of the parties and perused the relevant material on record. In the case, the Ld. CIT(A) has quashed the impugned assessment order on the ground that same was passed on non-existent entity. In the case notice u/s 143(2) of the Act was issued in the name of entity namely M/s Aditya Birla Ltd. The said company got merged with Vodafone Idea Ltd. effective from 30.11.2018 and the appointed date of the merger was 01.04.2018. The effect of the merger of M/s Aditya Birla Ltd. was brought to the notice of the Assessing Officer during the assessment proceedings. Despite the effect of the merger within the knowledge of the Assessing Officer, the Assessing Officer passed the impugned order in the name of the entity M/s Aditya Biral Ltd. i.e. name of entity prior to merger with Vodafone Idea Ltd. Accordingly, the Ld. CIT(A) held the assessment order passed on the non-existent entity M/s Aditya Birla Ltd. as non-est. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“7. **Ground No.1:** In this ground the appellant has challenged the validity of the assessment order on account of the fact that the order is in passed in the name of Aditya Birla Telecom Limited which was a non existent entity on the date of the passing of the assessment order.*



7.1 I have perused the submissions of the appellant on this issue. The appellant has relied on the decision of the Hon'ble ITAT in its own case in ITA NO.662/MUM/2022 (A.Y: 2017-18) vide order dated 1.12.2022 wherein the Tribunal has quashed the order u/s 263 of the Act passed by the PrCIT with regard to the impugned assessment order u/s 143(3) dated 5.12.2019. One of the grounds of challenging the order u/s 263 dated 26.03.2022 was that the assessment order itself u/s 143(3) was bad in law since it was in the name of Aditya Birla Telecom Limited an entity no longer in existence on the date of the passing of the order i.e 5.12.2019. The relevant extracts of the judgment of the Tribunal dated 1.12.2022 are reproduced below:

"23. Considered the rival submissions and material placed on record, we observe from the submissions of both the parties that the Assessing Officer has passed the final Assessment Order in the name of the M/s. Aditya Birla Telecom Limited (erstwhile name) even though the Assessing Officer was well aware of the fact the erstwhile company was merged with the assessee company w.e.f 30th November, 2018 with the appointed date of merger was April 1st, 2018. It is brought to our knowledge that Assessing Officer has issued several notices and enquired about the merger and discussed in detail about the merger in the various notices issued by him as well as in the assessment order. However, at the same time it is also brought to our notice that annexure to the above said notices in which Assessing Officer himself has used the existing name of the assessee and collected the various information relating to the merger. It clearly shows that assessee has brought to the notice of the Assessing Officer the real fact that the assessment which the Assessing Officer finalized is of the existing company i.e. Vodafone Idea Limited. In our considered view, the fact that the Aditya Birla, erstwhile name, is non-existent at the time of passing of the order by the Assessing Officer and Assessing Officer also aware of the fact of merger, therefore, the fact in the present appeal are exactly similar to 28 ITA NO. 662/MUM/2022 (A.Y: 2017-18) Vodafone Idea Limited the facts in the case of Pr.CIT v. Maruti Suzuki India Limited (supra). Therefore, the ratio of the Pr.CIT v. Maruti Suzuki India Limited (supra) is equally applicable in the present case

24. At the time of hearing, Ld. DR brought to our notice the decision in the case of M/s. Mando Automotive India Pvt. Ltd. (supra) and PCIT vs. Mahagun Realtors (P) Ltd. (supra) and wherein the facts are distinguishable to the facts in the present case and facts in the Maruti Suzuki case. In the case of M/s. Mando Automotive India Pvt. Ltd. (supra) and PCIT vs. Mahagun Realtors (P) Ltd. (supra) the erstwhile assessee misrepresented and actually filed the wrong informations in order to misguide the revenue. Accordingly, the Hon'ble Supreme/High Court has decided the issue against the assessee. However, the facts in the present case are not similar to the facts in the case of M/s. Mando Automotive India Pvt. Ltd. (supra) and PCIT vs. Mahagun Realtors (P) Ltd. (supra). Therefore, the ratio in the above said cases cannot be applied in the present case. It clearly indicates that Assessing Officer has passed, the Assessment Order in the name of the non-existing



entity. Therefore, the Assessment Order passed by the Assessing Officer itself is non-est, void and bad in law.

25. Considering the fact that the original Assessment Order passed by the Assessing Officer is bad in law, whether the collateral proceeding initiation u/s. 263 of the Act also be bad in law. It is brought to our notice that in the case of *Westlife Development Ltd., v. Pr.CIT (supra)* wherein the Coordinate Bench has addressed this issue and decided as under: -

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26. Further, we observe that the Hon'ble Jurisdictional High Court also dismissed the appeal of the revenue against the decision of the Coordinate Bench in the *Westlife Development Ltd., v. Pr.CIT (supra)*.
27. Therefore, respectfully following the above said decision, we hold that the order passed u/s. 263 of the Act is equally bad in law considering the fact that we already held that the original assessment order passed u/s. 143(3) is bad in law and an order passed which is not proper and non-est, the same order cannot be the subject matter of the revision u/s. 263 of the Act. Respectfully following the decision of the Coordinate Bench in the case of *Westlife Development Ltd., v. Pr.CIT (supra)* we are inclined to quash the revision order passed u/s. 263 of the Act and accordingly, ground raised by the assessee in Ground Nos. 1.4 and 1.5 are allowed and at the same time, other ground raised by the assessee are kept open at this stage. Accordingly, appeal filed by the assessee is partly allowed."

7.2 From the above it is clear that the ITAT has held that the assessment order dated 5.12.2019 which is the subject matter of this appeal is bad in law and non est. Accordingly, since the issue is already decided by the Honble ITAT, the Ground of Appeal is treated as Allowed."

2.1 Before us, the Ld. counsel for the assessee brought to our notice from the same issue has been adjudicated by the Co-ordinate Bench of the Tribunal while dealing with the proceedings u/s 263 of the Act dated 26.03.2022 against the impugned assessment order. The Co-ordinate Bench held that assessment order passed on non-existent entity was bad in law and therefore not sustainable. The ld CIT(A) has reproduced the relevant part of the decision of the Tribunal (*supra*),so we are not repeating again.



2.2 On perusal of the finding of the Co-ordinate Bench of Tribunal, it is evident that issue has already been decided against the Revenue and therefore, in following the finding of the Co-ordinate Bench, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly uphold the same. The grounds raised by the Revenue are dismissed.

3. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27/09/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/09/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai